

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

DANIEL GARCIA,

Plaintiff,

v.

Civil Action No. 2:10cv52

**LT. JG. T. THOMASON, RDA,
DR. R.H. LONG, D.D.S., and
MS. BORAM, Health Service Administrator,**

Defendants.

ORDER

On June 16, 2010, Magistrate Judge James E. Seibert filed a Report and Recommendation [Doc. 13] in the above-styled case. In the Report and Recommendation, the plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed. Accordingly, the Court will proceed with consideration of the Report and Recommendation reviewing for clear error.¹

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the plaintiff's Complaint [Doc. 1] were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation. Moreover, the Court, upon a review for clear error, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action.

Therefore, it is

¹The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See ***Wells v. Shriners Hospital***, 109 F.3d 198, 199-200 (4th Cir. 1997); ***Thomas v. Arn***, 474 U.S. 140, 148-153 (1985).

ORDERED that Magistrate Judge Seibert's Report and Recommendation [Doc. 13] be, and the same hereby is, accepted. Accordingly, it is

ORDERED that the plaintiff's Complaint [Doc. 1] be, and the same hereby is, **DISMISSED without prejudice** for failure to exhaust his administrative remedies. It is further

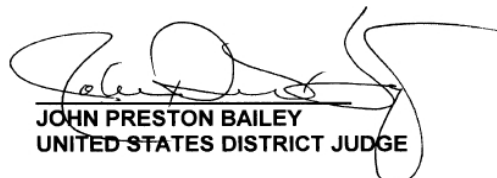
ORDERED that the above-styled action shall be **DISMISSED** and **STRICKEN** from the docket of this Court. It is further

ORDERED that the Clerk of Court shall enter judgment for the defendants. It is further

ORDERED that, if the plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk is directed to transmit true copies of this Order to the plaintiff and all counsel of record.

DATED: August 16, 2010


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE